

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE ORDER

**IN THE MATTER OF:
VICTORY LIFE CHRISTIAN
CENTER, INC.**

Public Water Supply Facility No. 3661801

**ADMINISTRATIVE ORDER
NO. 2010-WS-05**

**TO: Craig Eberly, President
Victory Life Christian Center, Inc.
2845 242nd Street
Sidney, Iowa 51652**

**Michael A. Batenhorst
Registered Agent
Victory Life Christian Center, Inc.
1305 Filmore
Sidney, Iowa 51652**

I. SUMMARY

This administrative order (order) is issued to the Victory Life Christian Center, Inc. (Victory Life) to resolve bacteria MCL, monitoring, and compliance schedule violations. This order requires Victory Life to identify and connect to an alternate water source in order to meet drinking water standards.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Terisa Thomas, Environmental Specialist
Iowa Department of Natural Resources
401 SW 7th Suite M
Des Moines, Iowa 50309-4611
Ph: 515/725-0283

Appeal, if any, addressed to:

Director, Iowa Dept. of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034

Relating to legal requirements:

Diana Hansen, Attorney at Law
Iowa Department of Natural Resources
502 E. 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/281-6267

Direct payment of penalty to:

Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued

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pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10 (455B), which authorize the Director to assess penalties.

III. STATEMENT OF FACTS

1. The public water supply system serving the Victory Life Christian Center derives its water from a single shallow gravel-packed well. There is no treatment provided at the facility. Distribution pressure and storage is provided by a single 30 gallon hydropneumatic pressure tank. The system serves a church with a kitchen, men's restroom, women's and children's restrooms in the basement, and the adjacent parsonage. This public water supply's well is constructed with a 36 inch concrete tile casing that has been capped below ground and brought to the surface with an 8 inch steel casing. There were cracked segments of the casing that were replaced in 2007. The well was drilled in 1980 and is approximately 95 feet deep. The facility serves 51 persons according to a sanitary survey conducted on June 24, 2008.
2. On April 4, 2008, the Department issued this public water supply its initial operation permit. Prior to this date, the supply was not listed with the Department as a public water supply system. The operation permit required sampling for total coliform bacteria once per calendar quarter and sampling for nitrate once per year.
3. On September 17, 2008, Jerry Jordison, an Environmental Specialist Senior from the Department's Field Office No. 4 (FO 4), conducted the initial sanitary survey at this public water supply system. The sanitary survey report noted that a proper casing vent needed to be installed. The facility was also required to complete and submit a bacterial sampling plan to FO 4.
4. On October 3, 2008, a Non-acute Total Coliform Bacteria MCL Violation was issued to this public water supply for the month of September 2008. On October 31, 2008, a Non-acute Total Coliform Bacteria MCL Violation was issued to this public water supply for the month of October 2008. On November 14, 2008, a Non-acute Total Coliform Bacteria MCL Violation was issued to this public water supply for the month of November 2008.
5. On December 29, 2008, Terisa Thomas, an Environmental Specialist from the Department's Water Supply Operations Section (WSO), telephoned Pastor Craig Eberly, the pastor with this church, regarding the need to place the supply on once per month coliform bacteria sampling. Pastor Eberly felt that due to the replacement of a new pressure tank in November 2008, there would be no more problems with the well. The field office concurred with this assessment.
6. On January 12, 2009, a Non-acute Total Coliform Bacteria MCL Violation was issued to this public water supply for the month of December 2008. On February 2, 2009, a Non-acute Total Coliform Bacteria MCL Violation was issued to this public water supply

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for the month of January 2009. These were the fourth and fifth Non-acute Total Coliform Bacteria MCL violations.

7. On February 10, 2009, in response to a work request from Terisa Thomas, WSO Environmental Specialist, Jerry Jordison, FO 4 Environmental Specialist Senior, conducted a visit to this supply. Pastor Eberly stated to Mr. Jordison that the well water was not used for drinking and that the church hauled water from the City of Sidney water supply instead. Sampling techniques were reviewed with Pastor Eberly. The FO 4 specialist advised Pastor Eberly to disinfect a drain tap and place a cap on the spout to keep contaminants out of the well. He also informed Pastor Eberly that if more violations occurred, this supply would be required to install chlorination.

8. On February 12, 2009, Mr. Jordison received a telephone call from Mr. Randy Monroe, a Board member at the Victory Life Christian Center. He stated that the previous weekend they had attempted to inspect the well and to again shock chlorinate it. He added that he had observed what he felt to be surface water entering the casing area and standing on the cap on the 36 inch portion of the well. Mr. Monroe stated that he felt that the well construction was the source of the bacterial contamination problem and wanted to know if the well could be re-cased. Mr. Jordison stated that it would be permissible but the project would need to be completed by a licensed engineer and proper construction permit applications would need to be filled out.

9. On February 20, 2009, a Non-acute Total Coliform Bacteria MCL Violation was issued to this public water supply for the month of February 2009. This was the sixth MCL violation. The Department determined that efforts to "troubleshoot" the issues had proven unsuccessful and the next step should be the installation of continuous disinfection.

10. On February 27, 2009, the operation permit for this facility was revised and reissued to this facility. The revised operation permit included an appendix that required this facility to install a continuous disinfection system. The revised permit appendix required that a construction permit application and pertinent specifications be sent to the Department by April 14, 2009. The permit appendix required that final installation of the continuous disinfection equipment be completed by May 12, 2009.

11. On March 25, 2009, a Non-acute Total Coliform Bacteria MCL Violation was issued to this public water supply for the month of March 2009. On April 27, 2009, a Non-acute Total Coliform Bacteria MCL Violation was issued for the month of April 2009. These were the seventh and eighth MCL violations.

12. On April 27, 2009, Ms. Thomas telephoned Pastor Eberly to determine the status of the construction permit application, which was due on April 14, 2009. He stated that due to the Easter holiday season, he had not been able to get the permit application filled out. He stated he was considering options such as Reverse Osmosis and that he would get the

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paperwork submitted soon. Ms. Thomas advised Pastor Eberly that the installation date could potentially be pushed back one to two weeks but no longer than that.

13. On May 28, 2009, Ms. Thomas contacted Mr. Jordison and Mr. Dan Stipe, supervisor at FO 4, to determine the next step for this supply. The supply missed its installation deadline and failed to contact the Department. It was agreed to send a Notice of Violation for failure to meet the compliance schedule in the permit appendix. This letter also stated that further failure to install continuous disinfection would result in legal action.

14. On May 29, 2009, a Notice of Violation was issued for failure to meet a compliance schedule for the installation of continuous disinfection equipment. On June 15, 2009, a Non-acute Total Coliform Bacteria MCL Violation was issued for the month of May 2009. This was the ninth MCL violation.

15. On June 25, 2009, Pastor Eberly contacted Mr. Jordison requesting assistance in filling out the construction permit application forms. It was believed at this time that the supply would be moving forward with installation. On July 1, 2009, Mr. Daryl Enfield, an Environmental Engineer with the Department's Water Supply Engineering Section (WSE), sent an email to Pastor Eberly offering assistance in completing the permit application forms and urging him to complete the forms as soon as possible. Additional copies of the forms were attached to the email.

16. On August 18, 2009, the Department issued a monitoring violation for failure to collect repeat samples from a June 30, 2009 routine positive sample for coliform bacteria. This facility received a positive routine sample taken on June 30, 2009. The facility was issued a letter stating that it was required to take repeat samples within 24 hours. The facility did not take repeat samples until July 22, 2009.

17. On August 21, 2009, Mr. Stipe sent an email note to Department staff stating that the supply had contacted State Representative Richard Anderson in regards to the continuous disinfection requirements. Mr. Stipe, Pastor Eberly, and Representative Anderson attempted to find an alternate solution.

18. On September 15, 2009, Mr. Stipe sent an email note to Department staff indicating that the discussion between the three parties identified a potential solution in which the church would remove all potable water sources in the church. This would entail removing all sinks from the bathrooms and kitchens and removing drinking fountains and essentially only leave the flushable toilets. By doing this, the supply would no longer fit the definition of a public water supply. It was indicated Rep. Anderson would discuss this with the church.

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19. On October 22, 2009, Mr. Stipe made a site visit to the supply to collect bacteria samples. Five bacteria samples were collected. On October 30, 2009, Mr. Stipe received results of the bacteria samples collected. All five samples were bacteria absent.

20. At the request of the Department, Victory Life hired a contractor to televise the existing well in April 2010 to determine if there were structural deficiencies. The well was televised and the video was sent to the Department for review. Roy Ney, P.E., Environmental Engineer Senior, from the Department's WSE, reviewed the video on May 21, 2010.

Upon review of the televised well video for Victory Life Christian Center, Mr. Ney noted several deficiencies that compromise the integrity of the well to serve the public. He noted in his review that the well is a large diameter well constructed of what appears to be 2 foot concrete pipe segments. At about the 6 foot depth there is a cap and from there to the surface it appears as though a 6 inch PVC casing is provided with a pitless adaptor.

Mr. Ney noted that the total depth of the well is approximately 70 feet. Each of the joints was observed in Mr. Ney's review of the video. Near the surface at one joint, there appeared to be a small root growing along the inside of the casing. The casing appeared to be wet near the surface and down at least a portion of the pipe. It appeared as though water had entered the well recently from a very shallow depth. It could not be determined how much water may have been getting into the well through shallow joints or if or to what extent the upper casing joints have been sealed. At a depth just above the water table there appeared to be a crack in the casing. This crack and any unsealed joints in the casing allow a pathway for viruses, *Cryptosporidium*, *Giardia lamblia* and other microbiological contaminants to enter the well. This well has been determined to be under the direct influence of surface water or influenced groundwater (IGW) and therefore is not suitable for a public water supply well.

In addition, WSE noted that there was no screen at the base of the well to indicate an obvious method for the well to be filled. It is suspected that this well is filled by a "seepage" mechanism whereby water seeps in through the large diameter concrete tiles and fills the well.

It is for these reasons, in addition to the extensive history of positive total coliform bacteria samples, that WSE, WSO, and FO 4 staff amend the Department's prior recommended actions to require this supply to identify an alternate source of water. This alternate source could be either connecting to another public water supply acceptable to the Department or the construction of a new drinking water well that meets drinking water standards. In addition, this order will increase the required frequency of total coliform bacteria monitoring to 5 samples per month.

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IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.172 makes this Department the agency of the state to conduct the public water supply program. Iowa Code section 455B.171 defines a public water supply system as a system for the provision of piped water for human consumption, if the system has at least fifteen service connections or regularly serves at least twenty-five individuals. Iowa Code sections 455B.173(3), (5), and (6) authorize the Environmental Protection Commission (Commission) to promulgate rules relating to the operation of public water supply systems and to adopt drinking water standards to assure compliance with federal standards adopted pursuant to the federal Safe Drinking Water Act. The Commission has the authority to adopt rules relating to monitoring, record keeping, and reporting requirements for any public water supply. The Commission has adopted such rules at 567 IAC chapters 40- 43.

2. Rule 567 IAC 40.2(455B), further defines public water supply by defining "community water system" as a public water supply which has at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents, consistent with federal regulations. A "noncommunity water system" is any other public water supply. This facility is a transient noncommunity water system.

3. Subrule 41.2(1), paragraph "b" establishes the MCL for coliform bacteria. For a system that collects less than 40 samples per month, no more than one sample collected during a month may be total coliform-positive. In addition, any fecal coliform-positive repeat sample or *E. Coli*-positive repeat sample, or any total coliform-positive repeat sample following a fecal coliform-positive or *E. Coli*-positive routine sample constitutes a violation of the MCL for total coliforms and is considered an acute risk to health.

4. Subrule 567 IAC 41.2(1) requires a noncommunity water system to be sampled at least once per calendar quarter. More frequent sampling may be required and is required by this order. This order increases the sampling requirement to five samples per month. When positive results are obtained in a routine sample, additional follow-up sampling is required. Subrule 83.1(3) requires the samples to be analyzed at a certified laboratory. Subrule 42.4(1) requires that the analytical results be reported to the Department within ten days after the test. Subrule 42.5(1) requires a public water supply system to retain records of bacteria analyses of its water supply for a period of five years.

5. Subrule 567 IAC 43.3(1) pertains to standards for public water supplies. This subrule provides as follows.

43.3(1) Standards for public water supplies. Any public water supply that does not meet the drinking water standards contained in 567—Chapters 41 and 43 shall make the alterations in accordance with the standards for construction contained in 43.3(2) necessary to comply with the drinking water standards unless the public water supply has been granted a variance from a maximum contaminant level or treatment technique as a

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provision of its operation permit pursuant to 43.2(455B), provided that the public water supply meets the schedule established pursuant to 43.2(455B). Any public water supply that, in the opinion of the director, contains a potential hazard shall make the alterations in accordance with the standards for construction contained in this rule necessary to eliminate or minimize that hazard. A system that is not operating within the design standards may be required by the department via a compliance schedule to upgrade the deficient areas of the system before a construction permit will be issued for any work in the system that does not address the current deficiencies.

This subrule authorizes the Department to require a public water supply facility to connect to an alternate water source, which could include construction of a new well, in order to meet drinking water standards.

6. Iowa Code section 455B.183(1) provides as follows:

"It is unlawful to carry on any of the following activities without first securing a written permit from the director, or from a city or county public works department if the public works department reviews the activity under this section, as required by the department.

1. The construction, installation, or modification of any disposal system or public water supply system or part thereof or any extension or addition thereto...."

7. Department subrule 567 IAC 43.3(3) requires written construction permits. "No person shall construct, install, or modify any project without first obtaining, or contrary to any condition of, a construction permit issued by the director...." Pursuant to this rule and Iowa Code section 455B.183(1), you are required to obtain a construction permit from the Department prior to connection to an alternate water source or construction of a new well.

V. ORDER

THEREFORE, the Department orders Victory Life to comply with the following provisions in order to abate and redress violations of Department rules and the facility's public water supply operation permit:

1. You are required to identify an alternate source of drinking water. This alternate source could be either connecting to another public water supply system acceptable to the Department or the construction of a new well that meets drinking water standards and standards for public water supply construction within 120 days of receipt of this order. You are required to submit complete plans and specifications and a complete construction permit application for the selected alternative to WSE within 60 days of receipt of this order. You are required to receive a construction permit from WSE prior to beginning construction.

2. You are required to immediately begin sampling this public water supply five times per month to be tested for coliform bacteria, submit the samples to a laboratory certified

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for bacteria analysis, timely report the results to the Department, and maintain a record of such analyses for five years. You are required to maintain full compliance with the coliform bacteria monitoring requirements. This includes taking all required repeat and additional routine samples required by the Department in the event of an unsatisfactory coliform bacteria sample. You are required to sample for coliform bacteria as required by this paragraph until there is connection to an alternate source of drinking water or construction of a new well meeting drinking water standards and the Department has notified you that you are no longer required to sample five times per month.

3. Stipulated penalties are assessed as follows. You are required to pay a stipulated penalty of \$500.00 for failure to submit plans and specifications within 60 days of receipt of this order. You are required to pay \$500.00 for failure to meet the deadline to complete construction for connection to an alternate source of safe drinking water within 120 days of receipt of this order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10.

Pursuant to chapter 10, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with stipulated penalties. The stipulated penalties are determined as follows:

The stipulated penalties in this order are for future violations, if they occur. The stipulated penalties are designed to reflect the potential economic benefit to Victory Life for failure to make the expenditures needed to stay on schedule. Such penalties are related to the probable severity of the violations in that not meeting the compliance schedule in this order is a fairly serious matter in view of past deficiencies. The penalties would also be related to future culpability in that Victory Life has been put on notice by this order that stipulated penalties will result if the compliance schedule is not met.

VII. APPEAL RIGHTS

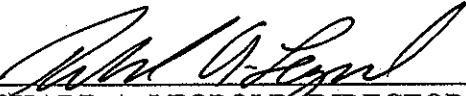
Pursuant to Iowa Code section 455B.175(1), and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, a written notice of appeal to the Commission may be filed within 30 days of receipt of this order. The notice of appeal should be filed with the Director of the Department, and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal. A

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contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

VIII. NONCOMPLIANCE

Compliance with Paragraphs V.1- 2 constitutes full satisfaction of all requirements pertaining to the specific violations described in this order. Failure to comply with this order may result in referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. The Department reserves the right to issue an administrative order or to refer to the Attorney General's Office in lieu of collecting stipulated penalties pursuant to this order.



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 1 day of
July, 2010.

Victory Life Christian Center, Inc. - Water Supply Facility No. 3661801, Terisa Thomas-
Water Supply Operations Section, Dan Stipe- Field Office No. 4, Diana Hansen- Legal
Services Bureau, II.B.2.a., II.B.2.b., II.B.2.c.